

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

BILLY RAY HELLARD,

Petitioner,

v.

3:07-cv-144

HOWARD CARLTON, Warden,

Respondent.

MEMORANDUM AND ORDER

Petitioner has filed his fourth petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254; his application to proceed *in forma pauperis* is **GRANTED**. Petitioner was convicted of aggravated rape, aggravated kidnapping, rape, and simple robbery. His first habeas corpus petition was denied on the merits. *Billy Ray Hellard v. James Bowlen, Warden*, Civil Action No. 3:92-cv-226 (E.D. Tenn. February 24, 1995) (order denying habeas corpus petition). Petitioner's second petition was dismissed as an abuse of the writ. *Billy Ray Hellard v. Tennessee Department of Correction*, Civil Action No. 3:95-cv-590 (E.D. Tenn. October 19, 1995) (order dismissing petition).

Petitioner's third petition was transferred to the Sixth Circuit, for consideration whether petitioner should be authorized to file a second or successive § 2254 petition in the district court, in accordance with the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and *In re Sims*, 111 F.3d 45 (6th Cir. 1997); the Sixth Circuit denied petitioner's request for an order authorizing the district court to consider a successive habeas corpus petition. *Billy R. Hellard v. State of Tennessee*, Civil Action No. 3:04-cv-184 (E.D. Tenn. December 6, 2004) (order from the Sixth Circuit).

This court has not been authorized to consider petitioner's successive petition for the writ of habeas corpus. Accordingly, the habeas corpus petition is **DENIED** and this action **DISMISSED**. A certificate of appealability **SHALL NOT ISSUE** in this action. 28 U.S.C. § 2253(c). The court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this court **DENIES** the petitioner leave to proceed *in forma pauperis* on appeal. See Rule 24 of the Federal Rules of Appellate Procedure.

E N T E R:

s/ Thomas W. Phillips
United States District Judge